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9
10 **BEFORE THE**
11 **PHYSICIAN ASSISTANT BOARD**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 950-2019-002305

14 **SEAN THOMAS LYNCH, P.A.**
10280 Holden Trails Road
15 Lakeside, CA 92040-2243

A C C U S A T I O N

16 **Physician Assistant License No. PA 20059,**
17
18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

22 1. Rozana Khan (Complainant) brings this Accusation solely in her official capacity as
23 the Executive Officer of the Physician Assistant Board, Department of Consumer Affairs (Board).

24 2. On or about November 4, 2008, the Physician Assistant Board issued Physician
25 Assistant License No. PA 20059 to Sean Thomas Lynch, P.A. (Respondent). The Physician
26 Assistant License No. PA 20059 was in full force and effect at all times relevant to the charges
27 brought herein and will expire on April 30, 2024, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 3501 of the Code states, in pertinent part:

As used in this chapter:

(a) 'Board' means the Physician Assistant Board.

(b) 'Approved program' means a program for the education of physician assistants that has been formally approved by the board.

(c) 'Trainee' means a person who is currently enrolled in an approved program.

(d) 'Physician assistant' or 'PA' means a person who meets the requirements of this chapter and is licensed by the board.

(e) 'Supervising physician' or 'supervising physician and surgeon' means a physician and surgeon licensed by the Medical Board of California or by the Osteopathic Medical Board of California who supervises one or more physician assistants, who possesses a current valid license to practice medicine, and who is not currently on disciplinary probation for improper use of a physician assistant.

(f) (1) 'Supervision' means that a licensed physician and surgeon oversees the activities of, and accepts responsibility for, the medical services rendered by a physician assistant. Supervision, as defined by this subdivision, shall not be construed to require the physical presence of the physician and surgeon, but does require the following:

(A) Adherence to adequate supervision as agreed to in the practice agreement.

(B) The physician and surgeon being available by telephone or other electronic communication method at the time the PA examines the patient.

(2) Nothing in this subdivision shall be construed as prohibiting the board from requiring the physical presence of a physician and surgeon as a term or condition of a PA's reinstatement, probation, or imposing discipline.

(g) 'Regulations' means the rules and regulations as set forth in Chapter 13.8 (commencing with Section 1399.500) of Title 16 of the California Code of Regulations.

...

(k) 'Practice agreement' means the writing, developed through collaboration among one or more physicians and surgeons and one or more physician assistants, that defines the medical services the physician assistant is authorized to perform pursuant to Section 3502 and that grants approval for physicians and surgeons on the staff of an organized health care system to supervise one or more physician assistants in the organized health care system. Any reference to a delegation of services

1 agreement relating to physician assistants in any other law shall have the same
2 meaning as a practice agreement.

3 (l) 'Other specified medical services' means tests or examinations performed or
4 ordered by a physician assistant practicing in compliance with this chapter or
5 regulations of the Medical Board of California promulgated under this chapter.

6 5. Section 3502 of the Code states:

7 (a) Notwithstanding any other law, a PA may perform medical services as
8 authorized by this chapter if the following requirements are met:

9 (1) The PA renders the services under the supervision of a licensed physician
10 and surgeon who is not subject to a disciplinary condition imposed by the Medical
11 Board of California or by the Osteopathic Medical Board of California prohibiting
12 that supervision or prohibiting the employment of a physician assistant.

13 (2) The PA renders the services pursuant to a practice agreement that meets the
14 requirements of Section 3502.3.

15 (3) The PA is competent to perform the services.

16 (4) The PA's education, training, and experience have prepared the PA to
17 render the services.

18 (b) (1) Notwithstanding any other law, a physician assistant performing medical
19 services under the supervision of a physician and surgeon may assist a doctor of
20 podiatric medicine who is a partner, shareholder, or employee in the same medical
21 group as the supervising physician and surgeon. A physician assistant who assists a
22 doctor of podiatric medicine pursuant to this subdivision shall do so only according to
23 patient-specific orders from a supervising physician and surgeon.

24 (2) A supervising physician and surgeon shall be available to the physician
25 assistant for consultation when assistance is rendered pursuant to this subdivision. A
26 physician assistant assisting a doctor of podiatric medicine shall be limited to
27 performing those duties included within the scope of practice of a doctor of podiatric
28 medicine.

(c) Nothing in regulations shall require that a physician and surgeon review or
countersign a medical record of a patient treated by a physician assistant, unless
required by the practice agreement. The board may, as a condition of probation or
reinstatement of a licensee, require the review or countersignature of records of
patients treated by a physician assistant for a specified duration.

...

6. Section 3527 of the Code states:

(a) The board may order the denial of an application for, or the issuance subject
to terms and conditions of, or the suspension or revocation of, or the imposition of
probationary conditions upon a PA license after a hearing as required in Section 3528
for unprofessional conduct that includes, but is not limited to, a violation of this

chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the board.

...

(d) The board may order the licensee to pay the costs of monitoring the probationary conditions imposed on the license.

(e) The expiration, cancellation, forfeiture, or suspension of a PA license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

7. California Code of Regulations, title 16, section 1399.521 states:

In addition to the grounds set forth in section 3527, subd. (a), of the Code the board may deny, issue subject to terms and conditions, suspend, revoke or place on probation a physician assistant for the following causes:

(a) Any violation of the State Medical Practice Act which would constitute unprofessional conduct for a physician and surgeon.

...

8. Section 2227 of the Code states:

(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

(1) Have his or her license revoked upon order of the board.

(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters

made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

9. Section 2234 of the Code states, in pertinent part:

The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

...

10. Section 2266 of the Code states:

The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.

COST RECOVERY

11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

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FACTUAL ALLEGATIONS

Patient A¹

12. On or about August 3, 2018, Patient A, a then 60-year-old female, presented with complaints of a sore throat for two (2) weeks and dark red brown vaginal discharge for (1) day.

13. According to records, Respondent performed an evaluation of Patient A, including a pap smear and ordering a urine analysis. During the pap smear, Respondent noted a small amount of blood on the speculum. Respondent then assessed Patient A with vaginal discharge, hematuria,² dysuria,³ and sore throat. According to records, Respondent advised Patient A to follow up, as needed.

14. According to records, Respondent did not order a gynecologic evaluation or any further testing until requested by Patient A's primary care physician.

15. On or about July 20, 2021, Respondent attended a subject interview with Board investigators. During the interview, Respondent agreed vaginal bleeding for a post-menopausal female requires additional consideration, as compared to vaginal discharge.

Patient B

16. On or about October 11, 2018, Patient B, a then 46-year-old male, presented with several complaints, including, but not limited to, complaints of muscle and joint pain for approximately three (3) weeks and blood in his stool for approximately one (1) month.

17. According to records, Respondent performed an evaluation of Patient B and assessed Patient B with chronic joint and muscle aches and diabetes.

18. According to records, Respondent did not perform an abdominal exam, anal exam, or rectal exam of Patient B.

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¹ For patient privacy purposes, patients' true names are not used in the instant Accusation to maintain patient confidentiality. The patients' identities are known to Respondent or will be disclosed to Respondent upon receipt of a duly issued request for discovery and in accordance with Government Code section 11507.6.

² Hematuria indicates the presence of blood in urine.

³ Dysuria indicates pain or burning sensation during urination.

1 19. According to records, Respondent did not refer Patient B to gastroenterology or order
2 an endoscopy or colonoscopy to determine a definitive diagnosis.

3 20. According to records, Respondent did not note any necessary follow up for Patient B,
4 only indicating, follow up, as needed.

5 21. On or about October 12, 2018, according to records, Respondent informed Patient B
6 that he had ordered a stool test for blood.

7 22. On or about July 20, 2021, Respondent attended a subject interview with Board
8 investigators. During the interview, Respondent stated Patient B refused a physical examination
9 of his abdomen and digital rectal examination. Respondent admitted this information was not
10 documented in Patient B's records.

11 **Patient C**

12 23. On or about December 21, 2018, Patient C, a then 48-year-old male, presented with
13 complaints of insomnia. According to records, Patient C indicated he had not slept in three (3)
14 days and felt nausea and restlessness. Patient C also indicated having a problem with alcohol and
15 stated he had been drinking alcohol "too much and too long." Patient C also requested assistance
16 to stop his drinking.

17 24. According to records, Respondent performed an evaluation of Patient C and noted
18 Patient C exhibited, among other things, elevated blood pressure, elevated heart rate, and an
19 abnormal EKG, specifically, tachycardia and right axis deviation.

20 25. According to records, Respondent diagnosed Patient C with, among other things,
21 alcoholism, elevated blood pressure, tachycardia, and insomnia. Respondent's treatment plan for
22 Patient C was to begin a blood pressure medication and follow up with his primary care physician
23 the following week. According to records, Respondent also provided Patient C with contact
24 information for two alcohol treatment centers.

25 26. According to records, Respondent failed to investigate the causes of Patient C's
26 elevated blood pressure.

27 27. According to records, Respondent failed to treat Patient C's elevated blood pressure
28 with lifestyle modifications and two blood pressure medications.

28. According to records, Respondent failed to document what blood pressure medication was prescribed to Patient C, including the dose and/or frequency.

Patient D

29. On or about November 14, 2018, Patient D, a then 39-year-old male, presented with complaints of rectum discomfort and pressure for approximately one (1) week and frequent urination.

30. According to records, Respondent performed an evaluation of Patient D and noted moderate blood on a urine dip. Respondent diagnosed Patient D with rectal pain, urinary frequency, and hematuria. According to records, Respondent ordered a complete urine analysis, a urine culture, and a prostate-specific antigen. Respondent also ordered a blood count and metabolic panel which revealed Patient D had elevated calcium levels.

31. According to records, Respondent inserted a notation in Patient D's lab results indicating the metabolic panel results were normal.

32. According to records, Respondent did not communicate the elevated calcium level to Patient D or his primary care physician.

33. On or about February 8, 2022, Respondent attended a subject interview with Board investigators. During the interview, Respondent stated he verbally communicated the elevated calcium level to Patient D's primary care physician, but did not document this in Patient D's records.

Patient E

34. On or about September 7, 2017, Patient E, a then 59-year-old female, presented with complaints of pain in her left foot for approximately one (1) month.

35. According to records, Respondent performed an evaluation of Patient E and noted Patient E expressed feeling pain with palpation across her metatarsal heads and the hallux metatarsophalangeal joint. Respondent diagnosed Patient E with foot pain, pain in the left forefoot and toes. Respondent's treatment plan for Patient E included an order for a uric acid test and instructions to ice her foot and wear a stiff soled boot when using a shovel in her garden. According to records, Respondent also noted X-rays and follow up, as needed.

36. According to records, Respondent did not order any additional imaging or refer Patient E to podiatry or orthopedics.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

37. Respondent has subjected his Physician Assistant License No. PA 20059 to disciplinary action under sections 3527, subdivision (a), and 2234, of the Code, and the California Code of Regulations, title 16, section 1399.521, subdivision (a), as defined by section 2234, subdivision (b), of the Code, in that he committed gross negligence in his care and treatment of Patient A which included, but was not limited to, the following:

(a) Paragraphs 12 through 15, above, are hereby incorporated by reference and realleged as if fully set forth herein; and

(b) Respondent failed to order a gynecologic evaluation or any further testing for Patient A, until requested by Patient A's primary care physician.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

38. Respondent has further subjected his Physician Assistant License No. PA 20059 to disciplinary action under sections 3527, subdivision (a), and 2234, of the Code, and the California Code of Regulations, title 16, section 1399.521, subdivision (a), as defined by section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in his care and treatment of Patients A, B, C, D, and E, which included, but was not limited to, the following:

39. Respondent committed repeated negligent acts in his care and treatment of Patient A, which included, but was not limited to, the following:

(a) Paragraphs 12 through 15, and 37, above, are hereby incorporated by reference and realleged as if fully set forth herein;

(b) Respondent failed to order a gynecologic evaluation or any further testing for Patient A, until requested by Patient A's primary care physician;

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1 (c) Respondent failed to accurately document Patient A's presenting issue as
2 postmenopausal vaginal bleeding, instead documenting Patient A's condition as
3 vaginal discharge; and

4 (d) Respondent failed to recommend additional follow up medical care, instead
5 only documenting "follow up, as needed."

6 40. Respondent committed repeated negligent acts in his care and treatment of Patient B,
7 which included, but was not limited to, the following:

8 (a) Paragraphs 16 through 22, above, are hereby incorporated by reference and
9 realleged as if fully set forth herein;

10 (b) Respondent failed to perform an abdominal exam, an anal exam, or a rectal
11 exam with an anoscopy, and Respondent failed to document that Patient B
12 refused to allow Respondent to perform a digital rectal exam; and

13 (c) Respondent failed to document any further necessary follow up medical
14 care, instead only documenting "follow up, as needed."

15 41. Respondent committed repeated negligent acts in his care and treatment of Patient C,
16 which included, but was not limited to, the following:

17 (a) Paragraphs 23 through 28, above, are hereby incorporated by reference and
18 realleged as if fully set forth herein; and

19 (b) Respondent failed to properly manage Patient C's presenting conditions, in
20 that Respondent failed to fully investigate the cause of Patient C's elevated
21 blood pressure; Respondent failed to consider acute alcohol withdrawal as a
22 possible source for Patient C's other presenting conditions; Respondent failed
23 to evaluate and/or document an evaluation to determine the presence and/or
24 absence of tremor and shortness of breath; Respondent failed to recommend
25 lifestyle modifications and two medications for high blood pressure; and
26 Respondent failed to document what medication was prescribed to Patient C
27 and the instructions for this prescription.

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42. Respondent committed repeated negligent acts in his care and treatment of Patient D, which included, but was not limited to, the following:

(a) Paragraphs 29 through 33, above, are hereby incorporated by reference and realleged as if fully set forth herein; and

(b) Respondent failed to order the appropriate follow up medical care as indicated by Patient D's elevated calcium levels and communicated to Patient D that his lab results were normal, despite the elevated calcium levels.

43. Respondent committed repeated negligent acts in his care and treatment of Patient E, which included, but was not limited to, the following:

(a) Paragraphs 34 through 36, above, are hereby incorporated by reference and realleged as if fully set forth herein; and

(b) Respondent failed to properly manage Patient E's presenting conditions, in that Respondent failed to order any additional imaging to determine the severity of Patient E's injury; Respondent failed to refer Patient E to orthopedics or podiatry for an expedited consultation; and Respondent failed to make orders to provide for full immobilization of Patient E's foot.

THIRD CAUSE FOR DISCIPLINE

(Failure to maintain adequate and accurate records)

44. Respondent has further subjected his Physician Assistant License No. PA 20059 to disciplinary action under sections 3527, subdivision (a), and 2234, of the Code, and the California Code of Regulations, title 16, section 1399.521, subdivision (a), as defined by section 2266, of the Code, in that Respondent failed to maintain adequate and accurate records regarding his care and treatment of Patients A, B, C, D, and E, as more particularly alleged in paragraphs 12 through 43, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Violations of Provisions of the Medical Practice Act)

45. Respondent has further subjected his Physician Assistant License No. PA 20059 to disciplinary action under sections 3527, subdivision (a), and 2234, of the Code, and the California

Code of Regulations, title 16, section 1399.521, subdivision (a), as defined by section 2234, subdivision (a), of the Code, in that Respondent violated provisions of the Medical Practice Act in his care and treatment of Patients A, B, C, D, and E, as more particularly alleged in paragraphs 12 through 44, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physician Assistant Board issue a decision:

1. Revoking or suspending Physician Assistant License No. PA 20059, issued to Respondent Sean Thomas Lynch, P.A.;
2. Ordering Respondent Sean Thomas Lynch, P.A., to pay the Physician Assistant Board the reasonable costs of the investigation and enforcement of this case, and if placed on probation, to pay the Board the costs of probation monitoring; and
3. Taking such other and further action as deemed necessary and proper.

DATED: June 17, 2022

Kristy Voong for
ROZANA KHAN
Executive Officer
Physician Assistant Board
Department of Consumer Affairs
State of California
Complainant

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